

Application No. 09/688,213

Docket No. 00-VE15.17

REMARKS

Applicant submits this Response to the final Office Action mailed June 2, 2005 ("Office Action") in conjunction with the filing of a Request for Continued Examination of the above-identified application. In this Response, Applicant has amended claims 17 and 22, cancelled claims 10-16 and 18-21 (without prejudice to re-presenting the subject matter of these claims at a later time), and added new claims 29-39. Claims 1-9, 17 and 22-39 are now pending. No new matter has been added.

Applicant thanks the Examiner for allowing claims 1-9 and 25-28, and for indicating that claim 17 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has so amended claim 17, and therefore respectfully requests that the Examiner withdraw the objection of claim 17 and indicate its allowance as well.

The Examiner has rejected claims 10-15 and 18-24 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,654,914 to Kaffine et al. ("Kaffine") and claim 16 under 35 U.S.C. §103(a) as being unpatentable over Kaffine in view of U.S. Patent No. 5,917,820 to Rekhter. In this Response, Applicant has cancelled claims 10-16 and 18-21, and therefore the rejections of these claims is now moot. Applicant respectfully requests reconsideration of the pending claims, and favorable review of the newly proposed claims, in view of the following remarks.¹

Kaffine describes a method for isolating faults in a network that includes a plurality of Internet Diagnostic Units (IDUs). The IDUs communicate with portions of the network that are inward from the user. (See Kaffine, col. 7, lines 11-12). To isolate a fault, the user first calls a help line and speaks with an operator at the help desk who tries to isolate and correct the failure. (See Kaffine, col. 9, lines 1-5).

¹ As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

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To assist with the isolation ... the operator instructs the user to dial a diagnostic number. At stage 128, the user calls the diagnostic number associated with an IDU, e.g., IDU 94 (Fig. 2). ... At stage 130, the IDU 94 accepts the call from the user to form a diagnostic path 131 (Fig. 2) and attempts to negotiate a connection with the user. ... At stage 132, one or more IDU's, e.g., IDU's 94 and 96 (Fig. 2), under instructions from the controller 98 (Fig. 2), perform tests on the network 10 (Fig. 2). (Kaffine, col. 9, lines 5-19.)

Thus in order to initiate the diagnostic tools for fault isolation described in Kaffine, the user is required to first call an operator in order to initiate network testing. Furthermore, Kaffine does not describe any method steps where any portion of the system receives a selection of a service assessment via the web-based software application from the user. Rather, once the operator has been contacted, the testing described in Kaffine is described as being performed "under instructions of the controller 98" which "determines how to proceed with isolating the root cause of the problem." (Kaffine, col. 11, ll. 7-10.)

In contrast to Kaffine, claim 22 recites a method that includes:

- interacting directly with a remote device having a web-based software application through a web server in an access data communication network to receive a selection of a service assessment via the web-based software application from a customer subscribing to wide area access service;
- initiating the service assessment in response to the selection;
- from a local services domain, selectively isolating and determining current capabilities of test points in the access data communication network to provide service for the customer; and
- automatically reporting the determined current capabilities of the test points through the access data communication network to the user.

Kaffine does not teach or suggest the method recited by claim 22. For example, as noted above, Kaffine does not teach or suggest "interacting directly with a remote device having a web-based software application through a web server in an access data communication network to receive a selection of a service assessment via the web-based software application from a customer subscribing to wide area access service," and "initiating the service assessment in response to the selection," as recited in claim 22. Absent such teachings, Kaffine cannot anticipate claim 22, and Applicant respectfully requests that the Examiner withdraw the rejection of claim 22 for at least this reason.

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As claims 23 and 24 depend from claim 22, and therefore include all of the limitations of claim 22, Applicant believes claims 23 and 24 to be patentable over Kaffine for at least the same reasons as noted above for claim 22,² and respectfully requests that the Examiner withdraw the rejections of claims 23 and 24 as well.

Applicant has added new claims 29-39. Claims 29-39 are in compliance with the requirements of 35 U.S.C. § 112 based on the disclosures found throughout the specification, for example, at pages 42-54 and Figures 7B, 8A and 8B. Applicant believes claims 29-39 are not taught or suggested by the cited references, and are therefore patentable over the cited references. Applicant respectfully requests indication of allowance of claims 29-39.

² As Applicant's remarks with respect to the base independent claims are sufficient to overcome the Examiner's rejections of all claims dependent therefrom, Applicant's silence as to the Examiner's assertions with respect to dependent claims is not a concession by Applicant to the Examiner's assertions as to these claims, and Applicant reserves the right to analyze and dispute such assertions in the future.


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CONCLUSION

In view of the foregoing, Applicant respectfully submits that the pending claims are in condition for allowance. Reconsideration and allowance are respectfully requested. If there are any outstanding issues which need to be resolved to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned representative by phone at the number indicated below to discuss such issues. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to deposit account number 07-2347. With respect to this application, please charge any other necessary fees and credit any overpayment to that account.

Respectfully submitted,

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